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KEVIN L. RUSSELL
CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP
1600 ODSTOWER
601 SW SECOND AVENUE
PORTLAND, OR 97204

EXAMINER	
CZEKAJ, DAVID J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEORGE R. BORDEN IV, JEFFREY B. SAMPSELL,
and RICHARD QIAN

Appeal 2011-000809
Application 09/505,449
Technology Center 2400

Before MAHSHID D. SAADAT, DENISE M. POTHIER, and
JASON V. MORGAN, Administrative Patent Judges.

MORGAN, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 – 20. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

1. In a video system, a method of tracking a target object comprising the steps of:

(a) initiating an object tracking system;

(b) automatically increasing magnification of a recorded sequence of frames of an image in response to initiating said object tracking system free from further user input while said object tracking system is activated;

(c) receiving a user selection of an object of interest in at least one frame of said image while said object tracking system is activated and said while said image is being automatically increased in magnification in response to said initiating said tracking system; and

(d) designating the selected said object of interest as said target of said tracking system, wherein said magnification is automatically decreased based upon an automatically calculated level of confidence that said object its being said tracked falling below a threshold.

(App. Br. 7; Claims App'x).

Rejections and Appellants' Contentions

Appellants contend that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Ito (US 6,404,455 B1, June 11, 2002) and Loveland (US 6,437,819 B1, August 20, 2002).[1]

[1] Appellants do not specifically argue for separate patentability of dependent claims 2 – 20 (App. Br. 4 – 6).

ISSUES

1. Did the Examiner err in finding that the combination of Ito and Loveland teaches or suggests automatically increasing magnification of an image in response to initiating an object tracking system free from further user input while the object tracking system is activated, as recited in claim 1?

2. Did the Examiner err in finding that the combination of Ito and Loveland teaches or suggests receiving a user selection of an object of interest while an object tracking system is activated, as recited in claim 1?

3. Did the Examiner err in concluding that claim 1 would have been obvious to an ordinarily skilled artisan in light of the teachings and suggestions of Ito and Loveland?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments (Appeal Brief and Reply Brief) that the Examiner has erred.

We disagree with Appellants' conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner.

(1) Whether the Examiner erred in finding that the combination of Ito and Loveland teaches or suggests automatically increasing magnification of an image in response to initiating an object tracking system free from further user input while the object tracking system is activated, as recited in claim 1

Appellants argue that neither Ito nor Loveland teaches initiating an object tracking and automatically magnifying an image free from user input (App. Br. 4 – 5; Reply Br. 4 – 5). We disagree.

Ito teaches initiating a tracking system when an object enters a tracking screen and automatically magnifies or zooms in on the object (Col. 7, ll. 35 – 49; col. 12, ll. 14 – 37; Figs. 1 – 2B). That is, contrary to Appellants' assertions, Ito's entering object is not selected or designated by the user to be a target (App. Br. 5), and claim 1 does not require magnification occur without identifying an object (see App. Br. 5; Reply Br. 4). Rather, Ito's system automatically begins to magnify the object when the object enters the tracking screen and free from user input, as the Examiner states (Ans. 5 – 6).

(2) Whether the Examiner erred in finding that the combination of Ito and Loveland teaches or suggests receiving a user selection of an object of interest while an object tracking system is activated, as recited in claim.

For the first time in the Reply Brief, Appellants' further contend that Loveland does not teach selecting an object of interest while the tracking system is activated (Reply Br. 6). This argument has been waived. See Ex parte Borden, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not."). Nonetheless, the combination of Loveland and Ito teaches or suggests the concept of a user selecting an object of interest (as taught by Loveland) while the tracking system is activated (where the claimed tracking

system is taught or suggested by Ito) (see Ans. 3 – 4). That is, Loveland is relied on only for the narrow teaching of giving the user of a tracking system the ability to select a desired object or "an object of interest" (see Ans. 4; see also col. 2, ll. 39 – 41), as recited.

(3) Whether the Examiner erred in concluding that claim 1 would have been obvious to an ordinarily skilled artisan in light of the teachings and suggestions of Ito and Loveland

We disagree with Appellants' that the only obvious way to modify Ito would have been replacing Ito's step of automatically identifying an object to be tracked with manually identifying an object to be tracked (App. Br. 6). Ito discloses a "system for processing a tracking picture of an intruding object" (Abstract) (emphasis added), thus "allowing an observer to more easily make sure of the entering object on a video monitor screen" (col. 2, ll. 20 – 22). In contrast, Loveland teaches a system where a user can manually select or designate a person being viewed (i.e., an object of interest), thus allowing an observer "…to concentrate on other activities . . . after the initial designation of the subject…" (col. 2, ll. 39 – 41).

The teachings and suggestions of Ito and Loveland are complementary. Ito uses tracking (including zooming in) to help the observer recognize the presence of something or someone new (i.e., intruding), drawing the observer's attention in as needed. Loveland provides for tracking (including zooming out) of a designated subject, thus allowing the observer's attention to go elsewhere.

Given these different uses of tracking and the different effects on the observer's attention, the mere substitution of Loveland's manual tracking designation for Ito's automated tracking would not be the only obvious way

for an artisan of ordinary skill, possessing creativity and common sense, to combine the teachings and suggestions of Ito and Loveland. Instead, such an artisan would realize that Ito teaches initially using automatic tracking to help identify entering objects within a viewing screen or a potential target for further tracking, while Loveland teaches and suggests enabling manual tracking designation to allow the observer to lock onto a desired subject. Such a combination would provide the observer with the benefits of both references (drawing attention to a new subject, as needed, and allowing attention to go elsewhere after a subject has been designated by the viewer for further tracking), all while automatic tracking is active, as taught by Ito. Moreover, such a combination would be obvious because the combination is nothing more than the use of familiar elements according to known methods to yield a predictable result. See KSR Int'l Co. v. Teleflex, Inc., 550 US 398, 416 (2007).

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner has demonstrated that claims 1 – 20 are unpatentable and thus we sustain the Examiner's rejection of these claims under 35 U.S.C. § 103(a) because the Examiner did not err in finding and concluding that:

1. the combination of Ito and Loveland teaches or suggests automatically increasing magnification of an image in response to initiating an object tracking system free from further user input, while the object tracking system is activated, as recited in claim 1;

2. that the combination of Ito and Loveland teaches or suggests receiving a user selection of an object of interest, while an object tracking system is activated, as recited in claim 1; and

3. that claim 1 would have been obvious to an ordinarily skilled artisan in light of the teachings and suggestions of Ito and Loveland.

DECISION

We affirm the Examiner's decision rejecting claims 1 – 20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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